

Insurance crisis!

Many bars 'go bare' as costs skyrocket

By Tim Richard
staff writer

If you're injured by a drunk driver and think you can collect a million off the bar that served him, think again.

"Seventy percent of Michigan tavern owners no longer carry liquor liability insurance," said Ronald Y. Gutman of the Farmington Hills firm of Kaufman and Payton.

The reasons: Jury awards against tavern owners have been so steep that insurance companies will no longer sell them policies. Or else the premiums are so high that the "drum shop," as lawyers call it, can't afford them.

"IN MY district," said state Rep. Lyn Bankes, R-Livonia, "many tavern owners are reorganizing their businesses as two corporations — one owning the land and building, the other owning the business."

"Then if they're sued, they can just turn over the keys to the business but keep ownership of the land and building."

Even prestigious spots such as the Park Place in Traverse City can't afford insurance. Park Place discontinued serving drinks.

"Francisco's on Michigan Avenue closed its doors rather than go bare," reported state Sen. Patrick McCollough, D-Deerborn, whose district stretches to Garden City.

"PLAINTIFFS THINK they can get more money from a tavern owner with a high insurance policy," attorney Gutman told a state Senate committee recently. "But they may end up with nothing if the trend of liquor establishments going without insurance continues because carriers refuse to write policies in Michigan."

"Reasonable caps must be set on dram shop awards to woo insurance carriers back to Michigan," Gutman said. The state must require mandatory "reasonable and affordable" insurance coverage for sellers of alcohol, too, he added.

He urged that Michigan's dram shop law be changed to prevent "double re-

covery," where a plaintiff is paid damages by both the drunk driver and the tavern owner.

Gutman's law firm, which also has offices in Detroit and Grand Rapids, conducts annual seminars on dram shop law and litigation. Its attorneys frequently contribute articles on the subject to legal and business journals.

Gutman testified at hearings before a subcommittee of the Senate Select Committee on Civil Justice Reform, which adopted his recommendation that bartenders be trained in how to recognize drunken behavior.

THE SENATE panel wouldn't recommend ending dram shop liability entirely. The liability is based on old case law holding that the person who serves a drunk driver can be sued for damages done by the drunk driver.

In its report — part of a larger booklet also covering medical malpractice and governmental liability — the senators said "the dram shop system of liability must be preserved. (But) the dram shop liability system is breaking down."

The committee proposed limiting the legal concept of "joint and several liability," in which the defendant with the "deepest pockets" could wind up paying the full judgment.

It noted dram shop law was enacted to make taverns "a secondary source of

compensation for innocent victims" injured by drunk drivers. "In practice, however, these licensees have become the primary source of compensation."

TAVERNS losing lawsuits would be allowed to pay off non-economic (pain and suffering) damages over \$100,000 in installments. The installments would cover only the injured person's lifetime.

"If the injured party dies before that time (when court judgment is paid off), then the net result is a substantial payment to the heirs who are unintended beneficiaries of the original judgment," said the Senate committee.

Suppose a person drinks at several bars before causing an accident. Should all be subject to lawsuit?

No, said the Senate panel. "Only the last licensee patronized by an alleged intoxicated person is liable for damages caused by that person," it suggested — adding that would be a "rebuttable presumption."

SEN. R. ROBERT Gaake, R-Northville, introduced bills to implement part of the committee's recommendations. They provide:

• "Afternoon eating trying to buy alcohol would have their driver's licenses suspended 30 days for a first offense, 60 days for a second and 90 days for a third."

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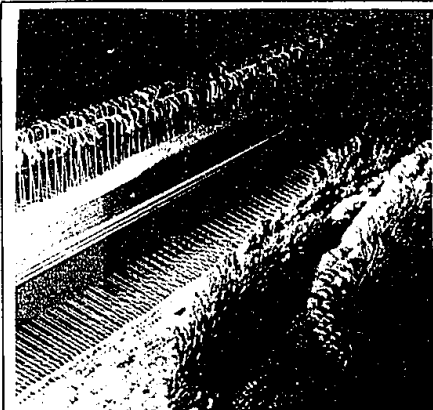
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